IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

CRL.A.No. 924 of 2005()

SC.265/2002 OF ADDITIONAL SESSIONS COURT, FAST TRACK COURT NO.I (AD HOC) MANJERI

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APPELLANTS/ACCUSED
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1. AYYAPPAN, S/O. UNNICHARU,
PUTHUKULANGARA, CHERUMKUZHI HOUSE,
MUNDAKULAM, MUTHUVALLUR.

2. GOVINDAN, S/O. UNNICHARU,
PUTHUKULANGARA, KODAKKATTIL HOUSE, MUTHUVALLUR,
MUNDAKULAM.

3. PRABHAKARAN, S/O. UNNICHARU,
PUTHUKULANGARA, KODAKKATIL HOUSE, MUTHUVALLUR,
MUNDAKULAM.

4. MOHANASUNDARAN, S/O. UNNICHARU,
PUTHUKULANGARA, KODAKKATIL HOUSE, MUTHUVALLUR,
MUNDAKULAM.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENT/COMPLAINANT

STATE OF KERALA,
REPRESENTED BY CIRCLE INSPECTOR OF POLICE,
KONDOTTY (CR.NO.411/97) THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR MR.P.RAVINDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K. BALI, C.J. & S.SIRI JAGAN, J.

Crl.Appeal No.924 of 2005

Dated, this the 1st day of December, 2006

JUDGMENT

V.K.Bali,C.J. (Oral)

Ayyappan (A1), Govindan (A2), Prabhakaran (A3) and Mohanasundaran (A4) who are the brother's sons of deceased Raman were tried under Sections 302, 323, 449, 324 read with Section 34 of the Indian Penal Code for intentionally causing the death of Raman, brother of the father of the accused and causing injuries to P.W.1 Chirutha, wife of Raman and P.W.2 Haridasan, son of the deceased. The trial culminated in their conviction under Section 302 IPC read with Section 34 of the Indian Penal Code in which they were sentenced to undergo imprisonment for life and to pay fine of Rs.8000/- each and in default of payment of fine to further undergo imprisonment for one year. They were also held guilty for offence under Section 449 IPC read with Section 34 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of

Rs.2000/- each and in default of payment of fine to further undergo imprisonment for six months. Though they were also held guilty for offences under Sections 323 and 324 IPC, no separate sentences on those counts were given to them, vide order 28th February, 2005 passed by the learned Additional Sessions Judge, Fast Track Court No.I (Ad Hoc) Manjeri. It is against this order that A1 to A4 have filed this appeal.

2. The occurrence leading to the death of Raman and injuries to others as per the prosecution version had taken place on 22.10.1997 at 9 A.M. The F.I.R. with regard to the incident came to be lodged by P.W.1, wife of Raman which was recorded by the Head Constable Sasi Kumar P.W.15 on the same day at 12.30 P.M.

3. In its endeavour to bring home the guilt against the appellants the prosecution examined Dr.Cyriac Job P.W.13 who stated that he had conducted postmortem examination of the dead body of Raman on 23.10.1997 and issued the certificate Ext.P10. The cause of death in the opinion of the doctor was cut injury to head as also penetrating injury to the chest. Injuries 5, 6, 24 and 25 which were incised wounds were fatal in nature.

These injuries could be caused by MO I series. Lacerated wounds and some abrasions could be inflicted with MO II series. The doctor found the following 30 injuries on the dead body of Raman which were in the opinion of the doctor ante mortem:

> "1. Incised wound 20 x 2 cm back of head, oblique extending from a point 5 cm above left mastoid prominence in the 1 O'clock position to a point 4 cm above right ear. The bones underneath were also cut 19 x 0.3 cm. Dura was cut underneath for a length of 10 cm at the middle of the incised wound and brain (1300 gms) showed cut injury 8 x 0.2 cm right parital area obliquely corresponding with the external injury for depth of maximum 1 cm (inner border).
>
> 2. Lacerated wound 6 x 0.5 cm tissue deep, top of head midline anteroposterior 14 cm. above root of nose.
>
> 3. Lacerated wound 4 x 0.5 cm tissue deep right side of head oblique front outer end 6 cm above inner end of right eyebrow.
>
> 4. Lacerated wound 3 x 1.5 cm bone deep right forehead slightly oblique inner lower end reaching right eyebrow 1 cm outer to midline, upper outer end 3 cm outer to midline. Scalp tissue internally underneath external injury number 2 to 4 showed contusion.
>
> 5. Incised wound anterior posterior top of right chest 10.5 x 2.5 cm x 2 cm outer to root of neck exposing the muscle underneath. It was directed downwards and medially for 4 cm right collar bone underneath the lower end of the incised wound

showed cut 3 x .1 x .1cm back end pointed and front end square cut.

6. Incised wound 7.5 x 2.7 x 3 cm vertically oblique front of chest right side upper outer end just below collar bone 7.5 cm outer to midline underneath the lower end 3rd rib showed a superficial cut 3 cm long lower inner end 6.5 cm outer to midline.

7. Three parallel contused abrasion 2.5, 2 and 3 cm long and 0.5 cm wide from above downwards at a distance of 3 and 0.5 cm enclosing small lacerated wound 0.2 x 0.2 cm at the inner ends of 2nd and 3rd on the right upper arm.

8. Two parallel contused abrasion 9 and 8 cm long 0.5 cm wide at a distance of 1 cm outer aspect of right upper arm 6 cm below injury No.7 incorporating a lacerated wound 0.2 x 0.2 at the inner end of the lower contusion.

9. Contusion 5 x 3 cm inner aspect of right palm 3 cm below wrist incorporating an abrasion 0.3 x 0.2 cm and the center.

10. Abrasion 1 x 0.5 cm inner aspect of lower border of right knee.

11. Abrasion 0.5 cm diameter 1 cm below injury No.10.

12. Abrasion 1 x 1 cm front of right knee 1 cm below injury No.11.

13. Abrasion 3.5 x 0.5 cm, 4 cm below injury No.12.

14. Abrasion 3.5 x 0.5 cm 9 cm below injury No.13.

15. Abrasion 1 x 0.5 cm right leg 2 cm inner to injury No.14.

16. Contusion 3 x 1.5 cm outer aspect of right leg 6 cm below knee 5 cm outer to midline.

17. Contused abrasion 2 x 1.5 cm, 2.5 cm below injury No.15.

18. Abrasion 2 x 0.5 cm from of left leg 8 cm below knee.

19. Contused abrasion 1 x 0.5 cm front of right leg 1 cm below No.18.

20. Contused abrasion 2.5 x 1 cm outer aspect of left thigh 6 cm above knee.

21. Contusion 7 x 2 cm outer aspect of left side of abdomen 22 cm below armpit in the mid axially line.

22. Contused abrasion 6 x 1.5 cm horizontal left side of chest 18 cm below arm in the anterior axially line.

23. Lacerated wound 2 x 0.5 cm outer aspect of left eyebrow bone deep, from the outer end lacerated wound extended downwards 3 x 1 cm bone deep.

24. Incised wound with contused margin right side of back of chest 7 x 1 cm oblique lower inner square cut end had a tailing for 1 cm situated 4 cm outer to midline 10 cm below root of neck. This injury extended upwards inwards and to the left entering the chest cavity through the 3rd intercostals space 5 x 1.5 cm and then causing incised wound 3 x 1 x 1 cm back aspect of upper lobe of right lung.

25. Incised wound with contused edges 6 x 0.8 cm oblique on the back of right side of chest. The inner lower end was square cut and had tailing for 1.5 cm horizontal inwards; 1.7 cm outer to midline 6.5 cm below roof of neck. The upper outer pointed end extended downwards 2 x 0.8 cm reaching a point 2 cm above outer upper end of injury No.24. L shaped with pointed end upwards and to the right. This entered the chest cavity cutting the 4th and 5th rib and caused a triangular incised wound 3 x 1 x 1 cm oblique, on the upper lobe; right side back aspect lower inner end reaching the inter lobular tissue 1.5 cm below the previous injury it was directed downwards forwards and to the left. Injury No.24 and 25 were communicated each other in the muscle plane. Right lung was found collapsed and right chest cavity contained 200 ml of blood. In line with and 4 cm left to lower inner end of the external injury left side of chest had an abrasion 1.5 cm x 5 cm.

26. Three parallel abrasion 9.5, 5 cm and 1 cm back of left side of chest 2.5 cm and 1.5 cm apart (above downwards), upper abrasion in line with 2 cm outer to the abrasion described injury No.25.

27. Linear abrasion 3 cm left side of back of chest 6 cm below and parallel to the abrasion in injury No.25.

28. Abrasion 5.5 x 0.5 cm back of left side of chest 6 cm below parallel to injury No.27 inner end reaching the midline.

29. Contusion 9 x 5 cm back of abdomen more towards left side 8 cm above small of back. The abdominal wall underneath was contused with fracture of ribs 8 to 10 left side back aspect.

30. Contused abrasion 1 x 0.2 cm back of left leg

22 cm below knee."

4. Dr.M.S.Moosabba who was examined as P.W.14 stated that on 22.10.1997 at 11 A.M. he had examined Haridasan and issued the certificate Ext.P11. The doctor found the following injuries on the person of Haridasan:

> "1. Incised wound of 5 x 2 cm. bone deep on the right parital temporal area.
>
> 2. Incised wound of 7 x 2 cm. cutting underlying muscles extending upto the plura on the left inter scapular region. It was longitudely placed. Plura was intact.
>
> 3. Contused abrasion of 2 x 2 cm on the dorsum of right forearm.
>
> 4. Incised wound of 2 x 2 x ½ cm. on the dorsum. No evidence of tender injury. X-ray shows normal chest and internal organs."

On the same day he also examined Chirutha and issued the certificate Ext.P12. The doctor found the following injuries on her person:

> "(i) Incised wound of 2 x ½ x ½ cm. on the left supra orbitral region with fracture of outer fulile of underlying frontal line.
>
> (2) Contused abrasion of 1 x 1 cm. on the back of the left forearm.

(3) Contusion of 5 x 5 cm. over the upper lumbar."

5. Chirutha while appearing as P.W.1 fully supported the prosecution version in tune with the FIR lodged by her. In the FIR she had stated that she was residing with her family. On the eventful day, i.e. 22.10.1997 at about 9 A.M. when her husband Raman went to the property on the eastern side of the house for gazing the cow, the sons of the elder brother of her husband Govindan and Ayyappan abused and pelted stones at him. Her husband sustained injuries due to pelting of stones. On hearing the commotion she went to the spot and brought her husband to the house and made him sit on the northern varandha. She went to the road for getting a jeep for taking her injured husband to the hospital. On hearing the noise again when she came back to her house she found the sons of her husband's elder brother Ayyappan, Govindan, Prabhakaran and Mohanasundaran coming running to her house with chopper and sticks. She saw Govindan cutting on the head of her husband with a chopper and Prabhakaran with a knife on the chest and back of her husband.

She cried aloud. On hearing her cries her son Haridasan came. Prabhakaran cut her husband on the head and back with the chopper. Ayyappan and Mohanasundaran beat her husband, her son and herself with a stick and kicked with his leg. On hearing the hue and cry, the neighbours Sulaiman, Nazar and Neelakandan came and on seeing them the accused ran away from the spot with the knife and stick. Her injured husband, son and herself were taken to the Medical College Hospital, Kozhikode in a jeep by her neighbour Kunjalankutty Haji and others. Her husband was declared dead by the doctor after examining him. Herself and her son were admitted in the hospital. Haridasan had undergone an operation for the injuries sustained on his head and back. In both hands also he sustained injuries. The motive of the incident was a property dispute between her husband and the sons of his elder brother. The occurrence had taken place at about 9.30 in the morning. Apart from her, Sulaiman, Nazar and Neelakandan had witnessed the incident.

6. Haridasan, P.W.2 the injured son of the deceased, fully supported the prosecution case. The son of P.W.2, Sharon P.W.3 also supported the prosecution case, but in the

examination in chief he implicated A2 and A3 as the persons who had caused cut injuries to Raman. P.W.8 Nazar who was an independent witness also fully supported the prosecution case. P.W.16 deposed with regard to the steps that he had taken while investigating the case.

7. When examined under Section 313 of the Code of Criminal Procedure A2 and A3 besides denying the incriminating materials put to them stated that they had caused injuries to Raman while exercising their right of self defence. The other two accused even though admitted their presence at the scene of occurrence, however, denied causing of any injury to Raman.

8. From the narration of facts as given above, it is clear that whereas the occurrence had taken place on 22.10.1997 at 9 A.M. the FIR came to be lodged within 3 ½ hours and it was lodged by Chirutha, the wife of Raman who was herself injured in the incident. What further appears is that the occurrence had taken place on 22.10.1997 in the morning at the house of the deceased where the presence of P.Ws.1, 2 and 3 is natural. It is thus a case of lodging a prompt FIR and further that the prosecution version is supported by persons who would be

natural witnesses to the occurrence and whose presence in so far as P.Ws.2 and 3 are concerned cannot be denied. They are stamp witnesses having been injured themselves in the same very occurrence in which Raman lost his life. Nazar P.W.8, who is an independent witness has also supported the prosecution case.

9. In the impressive array of facts as have been detailed above, there would not appear to be any scope for even a logical argument to be raised on behalf of the defence. Mr.R.Bindu, learned counsel appearing for the appellants, however, vehemently contends that in so far as P.Ws.1 and 2 are concerned they are highly interested in the prosecution case. In the present case he contends that P.W.3 who may also be equally interested in the prosecution case, but being a child of tender years would not normally depose falsehood nor would try to exaggerate the event. As per the version made by Sharon, P.W.3 only A2 and A3 had caused cut injuries to Raman and if that be so in so far as A1 and A4 are concerned they should be given the benefit of doubt. Even if it may thus be accepted or presumed that A1 and A4 were present at the scene of occurrence, they

could not be said to have shared the intention of A2 and A3, further contends the learned counsel.

10. We have given our thoughtful consideration to the only contention raised by the learned counsel as noted above. In the context of the facts of the present case, however, we find no merit therein. It may be true that P.W.3 while making a statement in examination in chief stated that he had seen A2 and A3 cutting his Achachan, i.e. grandfather and has not made a mention of A1 and A4, but that appears to be rather for the reason that being of tender age at the time when the incident had taken place he may not have completely remembered the entire incident. That apart, what really clinches the issue and fortifies the prosecution version as made by the first informant P.W.1 is the medical evidence. A perusal of the certificate issued by the doctor P.W.14 would reveal that the deceased had 30 injuries on his person. Injuries 1, 4, 5, 6, 24 and 25 are incised wounds. These injuries would have certainly been caused by a sharp edged weapon. Injuries 2, 3, 9, 16, 17, 19, 20, 21 and 22 are contusions whereas injuries 2, 3, 4 and 23 are lacerated wounds. It may be recalled that the consistent case of the

prosecution is that whereas A2 and A3 were armed with chopper and knife respectively, A1 and A4 were armed with sticks. It is also the case of the prosecution that one of them had given kick blows also. In so far as P.W.3 is concerned, as mentioned above, he has named A2 and A3. They are the persons according to him who had given knife blows to his grandfather. Presence of injuries like contusions and abrasions is a sure indicator that in addition to A2 and A3 there were others also present and caused injuries. The prosecution version is completely in consonance with the medical evidence. In other words, the prosecution case is corroborated by medical evidence and it points towards involvement of more than two persons.

11. From the nature of injuries it can be safely observed that the minimum persons who had caused injuries to Raman should be four as normally lacerated wound would be caused by a stick, whereas contusions may be caused by kick blows and that is what precisely is the prosecution case. The number of injuries further corroborates the prosecution case that all the appellants were responsible in causing injuries to Raman. The prosecution, in our view, has proved its case beyond shadow of reasonable

doubt. There is no illegality or infirmity in the order passed by the learned Sessions Judge dated 28th February, 2005. The appeal is totally devoid of any merit and it is dismissed.

V.K. BALI,
CHIEF JUSTICE.

S.SIRI JAGAN,
JUDGE.

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